

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 99-594

August 30, 2000

@LINK NETWORKS  
Petition for Finding of Public  
Convenience and Necessity to  
Provide Service as a Facilities-Based and  
Resold Local Exchange and  
Interexchange Service

ORDER GRANTING AUTHORITY TO  
PROVIDE LOCAL EXCHANGE  
SERVICE AS A RESELLER,  
FACILITIES-BASED AND RESOLD  
INTEREXCHANGE SERVICES, AND  
DEDICATED SERVICES; AND  
APPROVING SCHEDULE OF RATES  
AND TERMS AND CONDITIONS

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WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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In this Order, the Commission grants @link Networks (@link) the authority to provide competitive local exchange service as a reseller, facilities-based and resold dedicated (unswitched) services, and facilities-based and resold intrastate interexchange service in the State of Maine. We approve the Company's Terms and Conditions and Rate Schedules. We also exempt @link from the requirements of Chapter 210, *Uniform System of Accounts*, and of 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

**I. APPROVAL OF APPLICATION TO SERVE**

On August 25, 1999, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, @link filed a petition with the Commission requesting authority to provide facilities-based and resold local exchange and interexchange service in Maine. Before we grant approval under section 2102 for another public utility to provide service, 35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require an additional utility to provide service in a location where another utility is already authorized to provide, or is providing, the same or similar service.

47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service,

protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting @link the authority to provide local exchange, dedicated and interexchange services in Maine will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b).

@link's application provides reasonable information indicating that its financial and management capabilities are adequate to provide local and interexchange services in Maine.

## **II. SERVICE AUTHORITY AND TERRITORY**

@link has requested authority to provide facilities-based and resold interexchange service throughout the state. We grant that authority. In addition, it has requested authority to provide dedicated (unswitched) services, which may be provided using its own facilities or through services that it purchases from other carriers and resells. Dedicated facilities are capable of carrying either interexchange or local traffic.

@link initially requested authority to provide facilities-based local exchange service throughout the state. It has since agreed that, for the present, it will offer service only as a reseller of switched local exchange service provided by other local exchange carriers (LECs). We define local resale as the offering of local exchange service purchased from another competitive local exchange carrier (CLEC) pursuant to 47 U.S.C. § 251(b)(1) or from an incumbent local exchange carrier (ILEC) at a wholesale discount pursuant to 47 U.S.C. § 251(c)(4). The purchase of unbundled network elements from an ILEC and their use in providing local exchange service is facilities-based service and is not resale. @link's authority to provide switched local exchange service is limited to resale unless it obtains further authorization from the Commission.

We are also granting authority to @link to provide unswitched dedicated services, which may be provided using its own or leased facilities or dedicated services that it purchased from other carriers and resells. Dedicated facilities are capable of carrying both local and interexchange traffic. The grant of authority to provide dedicated unswitched services using facilities owned or controlled by @link does not constitute authority to provide facilities-based switched local exchange service.

If @link wishes to expand the scope of its authority in the future to provide facilities-based switched local exchange services, it shall seek approval pursuant to 35-A M.R.S.A. § 2102, requesting the Commission to amend this Order. @link shall simultaneously file amended Terms and Conditions pursuant to 35-A M.R.S.A. § 307 that state its proposed revised service territory for facilities-based local exchange service. @link's proposed service territory for facilities-based local exchange service shall be limited to those areas in which it will be ready to provide facilities-based

switched local exchange service within six months. The application shall include information establishing that readiness. It is not necessary for a CLEC with existing authority to present a full application in order to request additional service territory authority. The Commission will act expeditiously on any such application and revisions of Terms and Conditions. With any such application @link shall include information establishing a readiness to provide facilities-based local exchange service within six months in the specifically-identified areas.

### **III. APPROVAL OF TERMS AND CONDITIONS AND RATE SCHEDULES**

We allow the terms and conditions proposed by @link to go into effect. We have reviewed the Company's, Terms, Conditions and Rate Schedules, and they appear to comply with Maine law and the Commission's Rules. Nevertheless, if there is any conflict between a provision in @link's terms and conditions and the Commission's Rules or a statute, the rule or statute will control.

In general, the Commission believes that a competitive telecommunications market results in services and rates that benefit the public. We believe that the acceptability of @link's services and rates in the market place provides an adequate test of the reasonableness of the Company's rates. Accordingly, we allow the rates proposed by @link to go into effect.

At present, @link's rate schedule contains rates only for dedicated services. When and if it intends to provide switched local exchange and switched interexchange service, it must file rate schedules for those services.

### **IV. INTERCONNECTION AGREEMENT(S)**

In order to provide local exchange service, a CLEC must, as a practical matter, obtain an interconnection agreement with the ILEC(s) providing service in any area where it intends to provide service. In the absence of such an agreement, it will not be possible for @link's customers to call customers of the ILEC(s), and vice versa. Interconnection agreements are governed by 47 U.S.C. § 252, and must be approved by this Commission.

If a CLEC makes a bona fide request for an interconnection agreement with an ILEC that is a "rural telephone company" as defined in 47 U.S.C. § 153 (37), the "rural exemption" of 47 U.S.C. § 251 (f) will apply. All of Maine's independent incumbent local exchange carriers are "rural telephone companies." A rural telephone company is not required to negotiate an interconnection agreement or provide interconnection until after the Commission, pursuant to 47 U.S.C. § 251(f)(1)(B), finds that the requirement "is not unduly economically burdensome, is technically feasible, and is consistent with [the universal service provisions of] section 254 . . . ." Although the service territory we grant today for resold local exchange service is statewide, and @link's terms and conditions do not limit that service territory, as a practical matter it cannot offer local exchange

service in the service territory of a rural ILEC until such time as that ILEC's rural exemption is terminated.

As of the date of this Order, @link had not executed an interconnect agreement with Verizon or any other carrier, but it has requested Verizon to negotiate an agreement. When it does so, the agreement must be submitted to the Commission for approval pursuant to 47 U.S.C. § 252.

## **V. PAYMENT OF ACCESS CHARGES**

Our approval of @link's application to provide interexchange service in Maine is conditioned on the payment of access charges to local exchange carriers (LECs) who have on file with the Commission approved access charge rate schedules.

The Commission has granted authority to @link both as a facilities-based carrier and as a switchless reseller.<sup>1</sup> If @link provides facilities-based interexchange service, it must pay access charges directly to local exchange carriers.

Switchless resellers do not pay access charges directly to local exchange carriers. Access charges are instead paid by an underlying facilities-based interexchange carrier. As a condition of granting authority to a switchless reseller to provide intrastate service in Maine, its underlying facilities-based carrier must also have authority to provide intrastate service in Maine. @link has not specified an underlying interexchange carrier from which it will purchase interexchange services that it resells. @link states that it presently plans only to provide dedicated services, which may be used for both interexchange and local traffic. If @link decides in the future to provide resold interexchange services, it shall provide notice to the Commission, as required in the ordering paragraphs, of the identity its underlying interexchange carrier, which must have authority to provide service in Maine. If @link begins to use another underlying carrier, it shall notify the Commission, as required by the ordering paragraphs. If @link begins to provide a facilities-based interexchange service, it shall notify the Commission and all LECs from which it obtains access, as required by the ordering paragraphs.

## **VI. WAIVERS; REPORTING REQUIREMENTS**

As a condition of providing local exchange service, @link must comply with the terms of any applicable Commission orders or rules that may govern local interconnection and compensation for interconnection. @link shall also comply with any

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<sup>1</sup>We define switchless resellers as entities which do not own, lease, or control any switching facilities, or private lines, that it will use to provide telecommunication services in Maine. A reseller who owns a switch in another state, and plans to use that switch to switch or carry Maine traffic, is a switched reseller. A reseller who does not own facilities in Maine or any other state, or who owns facilities in another state but does not plan to use that switch to carry Maine traffic, is a switchless reseller.

applicable Commission Rules or orders that govern universal service, public safety and welfare, service quality and consumer rights.

Pursuant to sections 11(A) and 12(A) of Chapter 280, which govern carriers' interexchange activities, @link is exempt from Chapter 210 of the Commission's Rules, which governs telephone utility accounting and annual financial reports, and from 35-A M.R.S.A. §§ 707 and 708, which govern approvals for reorganizations and contracts with affiliated interests. Although @link has not requested waivers from the requirements of Chapter 210, and from 35-A M.R.S.A. §§ 707 and 708 for its local exchange service, the Commission has the authority to grant such waivers on its own motion and we do so. Because @link's rates and operations are likely to be subject to market forces, we do not see any present need to subject the Company to those requirements.

However, the Company must report its annual intrastate gross operating revenues, its revenues derived from sales to other carriers, and its annual intrastate minutes for use for the purpose of determining its regulatory assessment.<sup>2</sup> If @link resells service to other switched or switchless telephone service providers, the Company must maintain its records so that it may separately identify those sales. Pursuant to Chapter 280, § 11(B), @link

shall maintain records sufficient to identify and to allow auditing of traffic volumes, intrastate interexchange billings for both retail and wholesale services, and all information that is necessary to calculate access or interconnection charges in accordance with this Chapter. Those records shall be maintained for a minimum of 2 calendar years.

The exemptions from the affiliated interest approval requirements of 35-A M.R.S.A. §§ 707 and 708 granted by Chapter 280, § 12(A) are subject to the notice requirements contained in Chapter 280, §§ 12(B) and (C) and in the ordering paragraphs below.

In addition, @link shall inform the Commission of any changes to its corporate structure and ownership and of any changes in the name under which it does business, as set forth in the ordering paragraphs below. If necessary, it shall also refile its rate schedules and terms and conditions to reflect its new identity.

## **VII. OTHER REQUIREMENTS**

@link shall comply with all applicable rules of the Commission and statutes of the State of Maine, including the customer notification rule described in the ordering paragraphs below.

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<sup>2</sup>The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

**VIII. ORDERING PARAGRAPHS**

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of @link to provide facilities-based and resold competitive local exchange telephone service, facilities-based and resold dedicated services (which may carry local or interexchange traffic), and facilities-based and resold interexchange service in the State of Maine;

2. Exempt @link from the requirements of Chapter 210 of the Commission's Rules, except that it must report the revenue and minutes of use information that is requested by the Commission, on or before April 1 of each year;

3. Exempt @link from approval requirements of 35-A M.R.S.A. §§ 707 and 708, but @link shall provide notice to the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707 (1)(A), that results in a merger, sale or transfer of a controlling interest of @link or of any entity that owns more than 50% of @link. The notice required by this subsection shall be filed within 10 days following any reorganization described herein, as required by Chapter 280, § 12(B). As required by Chapter 280, § 12(C), @link shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and any change of its contact person. @link shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, @link shall amend its rate schedules and terms and conditions to reflect any change in identity;

4. Order that @link Networks' proposed terms and conditions and rate schedules (except for page 16), filed on March 30, 2000, and Original Page No. 16, filed on April 17, 2000, shall be effective on the date of this Order;<sup>3</sup>

5. Order that @link provide dedicated services pursuant to its approved rate schedules and terms and conditions, but that, before @link provides switched local exchange or switched interexchange services, it shall file and obtain Commission approval for rate schedules for those services;

6. Order that @link or an underlying facilities-based interexchange carrier authorized to provide interexchange service in Maine shall pay interexchange access charges as required approved access rate schedules filed by local exchange carriers. @link shall notify the Commission the identity of underlying interexchange carrier 10 days prior to providing any resold interexchange service, and shall provide the Commission with certification by the underlying carrier that it will pay access charges, except that certification is not required if the underlying carrier is AT&T, MCI WorldCom or Sprint;

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<sup>3</sup>@link withdrew the proposed terms, conditions and rates included in its original filing.

7. Order that @link shall notify the Commission of any change in its underlying carrier within 30 days following the change, and shall provide the Commission with certification by the new underlying carrier that it will pay access charges, except that certification is not required if the underlying carrier is AT&T, MCI WorldCom or Sprint;

8. Order that @link shall immediately inform the Commission and all local exchange carriers in the State of Maine from which @link will be purchasing access services if there is any change in its operations that will result in its carrying, switching, or any processing of any of its own traffic, at which time @link shall begin to pay access charges directly to those local exchange carriers that have approved access charge schedules on file with the Commission; and

9. Order that @link shall comply with all applicable rules of the Commission, including the requirement of Chapter 280 § 10 that interexchange carriers provide notice to all affected customers of an increase to any rate that is greater than 20%.

Dated at Augusta, Maine, this 30<sup>th</sup> day of August, 2000.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
   Nugent  
   Diamond

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.